

Jeffrey M. Doud  
Meghan M. Doud  
Timothy W. McKeon  
McKEON DOUD, P.C.  
60 Four Mile Drive, Suite 11  
Post Office Box 7878  
Kalispell, Montana 59904  
Telephone: (406) 755-7600  
Facsimile: (406) 755-7670  
*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
BUTTE DIVISION**

**BEST RATE TOWING & REPAIR, INC.**, a Montana corporation; **BEST RATE DIESEL REPAIR, INC.**, a Montana corporation; **TREASURE STATE FINANCIAL SERVICES, INC.**, a Montana corporation; **THE PLUMBER, INC.**, a Montana corporation; **WILD ABOUT PETS, INC.**, a Montana corporation; and **DALY DOG CARE, INC.**, a Montana corporation, on behalf of themselves and all others similarly situated,

## Plaintiffs,

VS.

**ZIPLOCAL, L.P., f/k/a PDC PAGES,  
a Deleware limited partnership  
operating under the assumed business  
name PHONE DIRECTORIES  
COMPANY OF MONTANA.**

**Defendant.**

Cause No. CV-10-38-BU-SEH-RKS

## **CLASS ACTION COMPLAINT AND JURY DEMAND**

**COME NOW**, Plaintiffs, by and through their undersigned attorneys, on their own behalf and on behalf of all others similarly situated, bring this action as follows:

## **JURISDICTION AND VENUE**

1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) (The Class Action Fairness Act) because, upon information and belief, the matter in

1 controversy exceeds \$5,000,000.00 exclusive of costs and interest, and more  
2 than two-thirds of the members of the Class reside in a state that is different  
3 than the state where Defendant resides.

- 4 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1331 because Plaintiffs  
5 reside in and suffered damages as a result of Defendant's conduct within this  
6 District. All of the negligent or fraudulent acts and transactions giving rise to  
7 this Complaint occurred in this District. Finally, Defendant: 1) is duly  
8 authorized to transact business in the State of Montana; 2) has purposefully  
9 availed itself of the laws and markets of the State of Montana through the  
10 promotion, marketing, and sale of advertising for its six regional phone  
11 directories that are distributed throughout the State of Montana. Defendant  
12 maintains sufficient contacts within the State of Montana through its sales and  
13 marketing offices. Defendant is subject to personal jurisdiction in the State of  
14 Montana.

15 **PARTIES**

- 16 3. At all material times herein, Plaintiff, Best Rate Towing & Repair, Inc. was a  
17 Montana corporation registered with the Montana Secretary of State and duly  
18 authorized to transact business in the State of Montana, with its principle place  
19 of business in Bozeman, Montana.  
20 4. At all material times herein, Plaintiff, Best Rate Diesel Repair, Inc. was a  
21 Montana corporation registered with the Montana Secretary of State and duly  
22 authorized to transact business in the State of Montana, with its principle place  
23 of business in Bozeman, Montana.  
24 5. At all material times herein, Plaintiff, Treasure State Financial Services, Inc.  
25 was a Montana corporation registered with the Montana Secretary of State and

duly authorized to transact business in the State of Montana, with its principle place of business in Missoula, Montana.

6. At all material times herein, Plaintiff, The Plumber, Inc. was a Montana corporation registered with the Montana Secretary of State and duly authorized to transact business in the State of Montana, with its principle place of business in Stevensville, Montana.
  7. At all material times herein, Plaintiff, Wild About Pets, Inc. was a Montana corporation registered with the Montana Secretary of State and duly authorized to transact business in the State of Montana, with its principle place of business in Hamilton, Montana.
  8. At all material times herein, Plaintiff, Daly Dog Care, Inc. was a Montana corporation registered with the Montana Secretary of State and duly authorized to transact business in the State of Montana, with its principle place of business in Hamilton, Montana.
  9. At all material times herein, Defendant, ZipLocal, L.P. f/k/a/ Phone Directory Company, was a Delaware limited partnership with its principal place of business in Orem, Utah. Defendant is registered with the Montana Secretary of State and duly authorized to transaction business in the State of Montana.
  10. At all material times herein, Defendant transacted business in the State of Montana by soliciting individuals and business owners to purchase advertising in one or more of its six regional telephone directories distributed throughout the State of Montana.

## **FACTUAL BACKGROUND**

11. Plaintiffs reassert and incorporate by reference all of the allegations set forth in paragraphs 1 through 10 above.

12. Defendant is in the business of publishing telephone book directories covering
13. six geographical regions in Montana: Billings, Bitterroot, Bozeman, Butte,
14. Flathead Country, and Missoula County.
15. Upon information or belief, Defendant has published its Bitterroot directory for
16. approximately twenty (20) years.
17. Upon information or belief, Defendant has published its Billings, Bozeman,
18. and Butte directories for approximately five (5) years.
19. Upon information and belief, Defendant has published its Missoula and
20. Flathead directories for approximately six (6) years.
21. According to the maps published by Defendant, each directory allegedly covers
22. the individual namesake city and surrounding areas.
23. As part of its operation, Defendant publishes a “yellow pages” section to its
24. directories which consists of printed advertisements purchased by individuals
25. and business owners.
26. Defendant solicited Plaintiffs to purchase advertising space within their
27. respective geographical or surrounding directories.
28. Defendant presented a wide array of advertising options to include anything
29. from a simple bold heading to a full-page advertisement or premium
30. advertisement located on a highly visible space on the directory (e.g. front
31. cover, back cover, spine, etc.).
32. Plaintiffs purchased advertising space in some of Defendant’s Montana
33. telephone directories.
34. Upon information and belief, Defendant engaged in a business practice
35. wherein it, by and through its sales representatives, would represent the

1 distribution area of a particular directory by showing the prospective advertiser  
2 a map of the geographic areas where the directory would be distributed.

- 3 22. Upon information or belief, Defendant specifically informed its salespersons  
4 to not give purchasers of advertising any specific figures as to the number of  
5 books printed or the number of books circulated/distributed through the  
6 particular geographical region.
- 7 23. Through this scheme, Defendant would represent or imply through its  
8 distribution maps, that directories would be distributed to one hundred percent,  
9 or as close as practical thereto, of the households and businesses in the  
10 geographical area represented on its distribution maps.
- 11 24. Defendant made representations, through its sundry materials, that the  
12 directories were “delivered door-to-door, free of charge to businesses &  
13 households in the mapped coverage area.”
- 14 25. Based on Defendant’s maps and representations, Plaintiffs reasonably believed  
15 that Defendant would distribute directories to one-hundred percent (100%), or  
16 as close as practical thereto, of the businesses and households located within  
17 the geographical region.
- 18 26. Beginning in 2009, Defendant would distribute directories to substantially less  
19 than one hundred percent of the households and businesses located in the  
20 represented geographical area of the directory.
- 21 27. In fact, public records show that while populations in the respective  
22 geographical regions stayed relatively level, Defendant generally continued to  
23 print fewer and fewer directories.
- 24 28. Between 2008 ad 2010, Defendant’s distribution in the Billings region dropped  
25 from 106,000 to 87,000 books.

- 1 29. Between 2008 and 2010, Defendant's distribution in the Bitterroot region
- 2 dropped from 32,000 to 23,000 books.
- 3 30. Between 2008 and 2010, Defendant's distribution in the Bozeman region
- 4 dropped from 76,000 to 26,000 books.
- 5 31. Between 2008 and 2010, Defendant's distribution in the Butte region dropped
- 6 from 44,000 to 33,000 books.
- 7 32. Between 2008 and 2010, Defendant's distribution in the Flathead region
- 8 dropped from 73,000 to 49,000 books.
- 9 33. Between 2008 and 2010, Defendant's distribution in the Missoula region
- 10 dropped from 66,000 to 43,000.
- 11 34. Defendant fraudulently concealed, from both past or prospective advertisement
- 12 purchasers, the actual number of books that it was distributing.
- 13 35. In some instances, no directories were distributed to any households or
- 14 businesses within entire cities or towns located in the geographical region, as
- 15 represented by Defendant through its distribution maps.
- 16 36. Due to Defendant's failure to distribute, Plaintiffs' advertisements were not
- 17 seen by large portions of the population, thereby minimizing the impact of
- 18 Plaintiffs' advertisements.
- 19 38. Defendant never informed Plaintiffs, or any other advertisement purchasers, of
- 20 the severe drop in the number of books distributed throughout each
- 21 geographical region.
- 22 39. Upon information and belief, Defendant never refunded any monies to or
- 23 credited the accounts of the purchasers of advertising based on the actual
- 24 geographical percentage of distribution.
- 25 40. As a result, Plaintiffs suffered damages.

## **CLASS ACTION ALLEGATIONS**

41. Plaintiffs reassert and incorporate by reference the allegations set forth in paragraphs 1 through 40 above.
  42. Plaintiffs bring this action on behalf of themselves and on behalf of all members of the following class: “all persons or businesses that purchased advertising to be printed in one or more of Defendant’s six Montana regional telephone directories to be printed in Defendant’s 2009 and 2010 directories.”
  43. Like Plaintiffs, all members of the Class purchased advertising from Defendants to be printed in one or more of Defendant’s six Montana directories.
  44. Like Plaintiffs, all members of the Class were never given a specific figure as to the number of books distributed throughout the Montana geographical regions.
  45. Like Plaintiffs, all members of the Class were shown maps, created and produced by Defendant or its agent(s), representing the distribution and coverage areas where Defendant’s directories were supposedly being distributed.
  46. Irrespective of any otherwise applicable statute of limitations, due to the fraudulent concealment alleged herein, the Class Period commences in 2008, at or about the time that Defendant’s employees started misrepresenting the distribution areas and runs to the present.
  47. Plaintiffs do not know the exact number of Class members, because such information is in the exclusive custody and control of Defendant, but reasonably believe, upon information and belief, that the class consists of more than 1,000 members statewide.

- 1       48. Due to the nature of the trade and commerce involved, the Class members here  
2       are sufficiently numerous and geographically dispersed throughout the State,  
3       so that the joinder of all Class members is impracticable.
- 4       49. Except as to the amount of damages each member of the Class has sustained,  
5       as to which there is considerable commonality or readily quantifiable  
6       differences, all other questions of law and fact are completely common to the  
7       Class, including but not limited to:
- 8           a. whether Defendant was negligent in their dealings with past and  
9              prospective advertisement purchasers;
- 10          b. whether Defendant breached the individual contracts it entered into with  
11             each member of the Class;
- 12          c. whether Defendant breached the implied covenant of good faith and fair  
13             dealing contained within every contract entered into in the State of  
14             Montana;
- 15          d. whether Defendant committed fraud by falsely representing or implying  
16             a one-hundred percent distribution to each household and business  
17             located within the represented geographical area to each Class member;
- 18          e. whether Defendant committed constructive fraud by falsely representing  
19             or implying a one-hundred percent distribution to each household and  
20             business located within the represented geographical area to each Class  
21             member;
- 22          f. whether Defendant committed deceit by falsely representing or implying  
23             a one-hundred percent distribution to each household and business  
24             located within the represented geographical area to each Class member;  
25             and

1 g. whether Defendant negligently misrepresented the actual geographical  
2 distribution of the directories.

3 50. Plaintiffs are members of the Class. Plaintiffs' claims are typical of the claims  
4 of all Class members. Plaintiffs will fairly and adequately protect the interests  
5 of the Class. Plaintiffs are typical purchasers of advertising space within the  
6 telephone book directory compiled by Defendant and their interests are  
7 coincident with and not antagonistic to those of the other members of the  
8 Class. In addition, Plaintiffs are represented by counsel who are competent  
9 and experienced in the prosecution of cases involving the claims asserted  
10 herein.

11 51. The prosecution of separate claims by individual members of the Class would  
12 create a risk of inconsistent or varying adjudications, establishing incompatible  
13 standards of conduct for Defendant, and would exhaust a considerable amount  
14 of the Courts' time.

15 52. The questions of law and fact common to the members of the Class  
16 predominate over any questions affecting only individual members, including  
17 legal and factual issues relating to liability and damages.

18 53. A class action is superior to other methods for the fair and efficient  
19 adjudication of this controversy. Treatment as a class action will permit a large  
20 number of similarly-situated persons or businesses to adjudicate their common  
21 claims in a single forum simultaneously, efficiently, and without the  
22 duplication of effort and expense that numerous individual actions would  
23 engender. Class treatment will also permit the adjudication of claims by many  
24 Class members who could not afford, individually, to litigate claims such as  
25 the ones asserted in this Complaint. This class action likely presents no

1 difficulties in management that would preclude maintenance as a class action.  
2 Finally, the Class is readily ascertainable.

3 **COUNT I**  
4 **Fraud**

- 5 54. Plaintiffs reassert and incorporate by reference all of the allegations set forth  
6 in paragraphs 1 through 53 above.
- 7 55. Defendant made representations to Plaintiffs that directories would be  
8 distributed to all households and businesses in the coverage area as depicted  
9 in Defendant's "distribution and coverage" maps.
- 10 56. Defendant's representations were false.
- 11 57. Defendant's representations were material.
- 12 58. Defendant either knew its representations were false or was ignorant of  
13 whether its representations were true.
- 14 59. Defendant intended Plaintiffs would rely upon its representations.
- 15 60. Plaintiffs were ignorant of the falsity of Defendant's representations.
- 16 61. Plaintiffs relied on Defendant's representations.
- 17 62. Plaintiffs had a right to rely on Defendant's representations.
- 18 63. Plaintiffs suffered damages as a direct and proximate result of their reliance  
19 upon Defendant's representations.
- 20 64. By acting as alleged herein, Defendant acted with actual malice and/or  
21 committed actual fraud within the meaning of § 27-1-221, M.C.A., thus  
22 entitling Plaintiffs to punitive damages in an amount sufficient to deter others  
23 from engaging in similar misconduct.

24       ///

25       ///

26       ///

## **COUNT II**

### **Constructive Fraud**

65. Plaintiffs reassert and incorporate by reference all of the allegations set forth in paragraphs 1 through 64 above.
  66. Defendant breached the duties it owed to Plaintiffs by representing that it would distribute directories to all of the households and businesses located within its mapped “distribution and coverage” area.
  67. Defendant’s breach misled Plaintiffs to Plaintiffs’ detriment.
  68. Defendant’s misrepresentation resulted in an advantage to Defendant.
  69. Plaintiffs suffered damages as a direct and proximate result of Defendant’s actions.

## **COUNT III**

---

### **Deceit**

70. Plaintiffs reassert and incorporate by reference all of the allegations set forth in paragraphs 1 through 69 above.
  71. Defendant willfully deceived Plaintiffs with the intent to induce them to alter their position to Plaintiffs' injury and Defendant's benefit.
  72. Defendant deceived Plaintiffs by:
    - a) suggesting that it would distribute its telephone directories, containing Plaintiffs' advertisements, throughout its mapped coverage and distribution area; OR
    - b) making a promise without any intention of performing it.
  73. Plaintiffs suffered damages as a direct and proximate result of Defendant's deceit.

*Complaint - Best Rate Towing & Repair, Inc. et al. v. Ziplocal, L.P.*

*McKEON DOUD, P.C.  
Post Office Box 7878  
KalisPELL, Montana 59904  
Telephone: (406) 755-7600*

**COUNT IV**  
**Negligent Misrepresentation**

74. Plaintiffs reassert and incorporate by reference all of the allegations set forth in paragraphs 1 through 73 above.
  75. Defendant made representations to Plaintiffs that its directories would be distributed to all households and businesses in the mapped “distribution and coverage” areas in their respective geographical region.
  76. Defendant’s representations were untrue.
  77. Regardless of its actual belief, Defendant made the representations without any reasonable grounds for believing them to be true.
  78. Defendant made the representations with the intent to induce Plaintiffs to rely on them.
  79. Plaintiffs were unaware of the falsity of the representations and were justified in relying upon Defendant’s representations.
  80. Plaintiffs have suffered damages as a direct and proximate result of their justifiable reliance on Defendant’s misrepresentations.

# COUNT V Negligence

81. Plaintiffs reassert and incorporate by reference all of the allegations set forth in paragraphs 1 through 80 above.
  82. Defendant owed Plaintiffs a duty of reasonable care when soliciting past and prospective clients to purchase advertising space in their geographical telephone directories.
  83. Defendant breached said duty by failing to truthfully disclose the actual number of telephone directories being distributed in the coverage area.

- 1 84. As a result of Defendant's breach of the duty it owed to Plaintiffs, Plaintiffs  
2 have suffered damages in an as-of-yet undetermined amount.  
3 85. Defendant's breach was a direct and proximate result of Plaintiffs' damages.

4 **COUNT VI**  
5 **Breach of Contract**

- 6 86. Plaintiffs reassert and incorporate by reference all of the allegations set forth  
in paragraphs 1 through 85 above.  
7 87. Plaintiffs and Defendant entered into contracts wherein Plaintiffs purchased  
advertising space in Defendant's directories for a particular sum of money as  
agreed upon by the parties and, in return, Defendant promised to print and  
distribute telephone directories to all of the households and businesses in the  
represented "distribution and coverage" area.  
8 88. Defendant breached the contract by failing to print enough books to distribute  
one to each and every household and business located within the represented  
"distribution and coverage" area.  
9 89. Moreover, Defendant breached these contracts by failing to inform Plaintiffs  
that directories would be distributed to substantially less than one-hundred  
percent of the households and businesses in the mapped "distribution and  
coverage" area.  
10 90. Defendant's breach was material.  
11 91. Plaintiffs suffered damages as a direct and proximate cause of Defendant's  
breach of the aforementioned contracts.

12 **COUNT VII**  
13 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

- 14 92. Plaintiffs reassert and incorporate by reference all of the allegations set forth  
in paragraphs 1 through 91 above.

- 1 93. Pursuant to § 28-1-211, M.C.A., every contract contains an implied covenant  
2 of good faith and fair dealing.
- 3 94. The conduct required by the implied covenant of good faith and fair dealing is  
4 honesty in fact and observance of reasonable commercial standards of fair  
5 dealing in the trade.
- 6 95. Defendant breached the implied covenant of good faith and fair dealing by: 1)  
7 making representations that caused a false belief in Plaintiffs' minds that  
8 Defendant would distribute directories to one-hundred percent of the  
9 households and businesses in the mapped "distribution and coverage" areas;  
10 and 2) failing to disclose to Plaintiffs the actual number of directories printed  
11 and distributed in the geographical regions.
- 12 96. Plaintiffs have suffered damages as a direct and proximate result of  
13 Defendant's breach of the implied covenant of good faith and fair dealing.

14 **COUNT VIII**  
15 **Vicarious Liability**

- 16 97. Plaintiffs reassert and incorporate by reference all of the allegations set forth  
17 in paragraphs 1 through 96 above.
- 18 98. Pursuant to § 28-10-602, MCA, a principal is responsible to third persons for  
19 the negligent acts of its agent(s) in a transaction of the business of the agency,  
20 including wrongful acts committed by such agent in and as a part of the  
21 transaction of such business, and for the agent's willful omission to fulfill the  
22 obligations of the principal.
- 23 99. Based upon information and belief, all of the above-mentioned wrongful acts  
24 and/or omissions were conducted by Defendant's agents while acting wholly  
25 within their authority as an agent for Defendant.

100. Therefore, Defendant is responsible for the wrongful acts and/or omissions of  
its agent(s), and any damages resulting therefrom.

WHEREFORE, Plaintiffs pray for damages as follows:

1. For an award of any and all special damages arising out of the claims set  
forth above;
2. For an award of general damages in an unspecified amount to be  
determined at the time of trial;
3. For an award of punitive damages, pursuant § 27-1-221, M.C.A. in an  
amount sufficient to deter Defendant and others from similar conduct;
4. For all costs incurred as a result of this litigation;
5. For an award of both pre-judgment interest and post-judgment interest;
6. For their attorney fees, if applicable; and
7. For such other just and equitable relief that this Court deems necessary  
and proper.

DATED this 5<sup>th</sup> day of August, 2010.

McKEON DOUD, P.C.

By: /s/ Jeffrey M. Doud  
Jeffrey M. Doud

1                           **DEMAND FOR JURY TRIAL**  
2

3                           **COMES NOW**, Plaintiffs, in the above-entitled matter, and hereby demand  
4 that the issues of fact herein be tried before a jury.

5                           McKEON DOUD, P.C.  
6

7

8                           By: /s/ Jeffrey M. Doud  
9                           Jeffrey M. Doud